

Memorandum

Date : December 8, 2003

To : Bob Therkelsen
Executive Director

File: 99-AFC-3C

From : California Energy Commission - Terry O'Brien, Deputy Director
1516 Ninth Street
Sacramento, CA 95814-5512
SA & FS Division

Subject : **ITEM FOR THE DECEMBER 17 BUSINESS MEETING – METCALF ENERGY CENTER PROJECT (99-AFC-3C) PETITION TO MODIFY THE PROJECT: DUE TO OBJECTIONS, PETITION MUST BE PROCESSED AS A FORMAL AMENDMENT**

COMMISSION ACTION REQUESTED AND SUMMARY OF PROPOSED MODIFICATION

Staff recommends approval of a Calpine petition to modify the Metcalf Energy Center (MEC) Project which is being brought before the Commission because of objections raised by an interested party.

On August 28, 2003, Calpine submitted a petition to modify the MEC Project by adding a temporary 4-acre construction parking/storage area to the project. This modification would not normally require full Commission approval because as specified in Title 20, Section 1769 of the California Code of Regulations, staff has determined that there is no possibility that the modification will have a significant effect on the environment, will not require a change or deletion of a condition adopted by the Commission, or make changes that will cause the project not to comply with any applicable LORS. However, objections to staff's determination have been received, thereby requiring the petition to be approved by the Commission as specified in Section 1769(a)(3).

BACKGROUND

MEC is a 600-megawatt combined-cycle, natural gas-fired project that was certified by the Energy Commission on September 24, 2001. The project is currently under construction and is scheduled for commercial operation by July 31, 2005.

STAFF ANALYSIS

Energy Commission staff have reviewed Calpine's request and have determined that proposed project changes will not have a significant effect on the environment when all applicable and existing conditions are applied to the construction and use of the new parking/storage area. These include making appropriate revisions to the on-site Storm Water Pollution and Erosion Control Plan including the Best Management Practices proposed in the application. Calpine has agreed to follow specific procedures in the

preparation and construction of the new parking/storage area to maintain compliance with Cultural Resources Condition of Certification CUL-6.

Condition VIS-5 requires temporary aesthetic screening for portions of the laydown area that may be visible to travelers on Monterey Road. The new parking/laydown area will be almost completely screened from Monterey Road by the screening that has been installed on the existing 14-acre parking/laydown area. Staff agrees with the only affected neighbor that it will not be necessary to erect additional temporary screening for the new 4-acre parking/storage area. A six-foot high wire mesh fence will be acceptable.

PUBLIC REVIEW

A Notice of Insignificant Project Change (IPC) was mailed to the MEC certification mailing list on October 29, 2003, and posted on the Commission's web site for public review. One letter of objection was received dated November 14, 2003, the deadline stated in the notice, from Mr. William Garbett.

Mr. Garbett's primary objection is that the proposed change represents a *"net increase of substantial proportion in size and intensity of construction beyond any approval of the City of San Jose Project and thus violates LORS, and rather than temporary are disguised, in effect permanent expansion for future plant upgrades."*

Staff response: The proposed approval of the parking area is limited only to a temporary expansion during the period of project construction. Once construction is completed, stockpiled topsoils will be replaced, and the land in question will be restored to agricultural purposes. Staff's proposed approval of the IPC request does not allow Calpine to maintain the property as a permanent addition to the project. Finally, staff has reviewed the IPC request and finds the request to be in compliance with LORS.

Other objections cited in the letter are:

1. The additional parking/storage area should have been incorporated into the original MEC Decision.

Staff response: Post-certification project modifications are allowed pursuant to section 1769(a)(2), Title 20, California Code of Regulations.

2. The additional parking/storage area will have a significant impact on the environment because it will result in a net loss of agricultural land and will disturb the surface soil.

Staff response: The parking/storage area is temporary, the topsoil will be stockpiled, and the site restored to agricultural use as soon as construction has been completed.

3. No cultural resources reconnaissance has been done on the proposed area.

Staff response: A cultural resources survey was completed on the proposed area, and no cultural resources were found.

Mr. Garbett addressed a number of items which are not related to Calpine's specific request. Mr. Garbett's additional objections regarding visual impacts of other aspects of the project, the recycled water line, other earlier modifications of the MEC Project, the status of legal challenges to the MEC Decision, and other matters are not germane to the specific request for addition of a temporary parking and storage area.

Staff believes that the objections have no merit, and that the proposed modification should be approved because staff identified no potential environmental impacts:

- A cultural resources survey found no cultural resources present.
- The area will be monitored full-time by a cultural resources monitor and Native American monitor during ground disturbance activities to ensure that proper procedures are followed if any unexpected finds are encountered.
- Staff has reviewed the IPC request and finds the request to be in compliance with LORS.
- Existing conditions of certification are sufficient to cover the proposed change without changes to, or deletion of, a condition of certification.

STAFF CONCLUSION AND RECOMMENDATION

As mandated by Title 20, section 1769(a)(2) of the California Code of Regulations, staff concluded:

1. There is no possibility that the modification may have a significant effect on the environment.
2. The modification will not result in a change or deletion of a condition of certification.
3. The modification will not make changes that would cause the project not to comply with applicable laws, ordinances, regulations, or standards.

Following staff's review of the petition to modify the MEC project design, staff determined the modification met the requirements of 1769(a)(2) and published a Notice of Insignificant Project Change to that effect. After reviewing the objections, staff continues to conclude that the proposed modification meets the requirements of Section 1769(a)(2) and therefore recommends that the Commission approve the modification to the MEC Project to add a temporary 4-acre parking/storage area during construction.

BUSINESS MEETING PARTICIPANTS

Steve Munro, Compliance Project Manager, (916) 654-3936

Mr. Garbett's Letter of Objection is available on the Energy Commission's Website.